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BEFORE THE IDAHO STATE BOARD OF PROFESSIONAL
COUNSELORS AND MARRIAGE & FAMILY THERAPISTS

In the Matter of the License)	
of:)	Case No. COU-2006-2
)	
PRESTON LYNN CARBARY,)	FINDINGS OF FACT, CONCLUSIONS
License No. LCPC-3214,)	OF LAW AND RECOMMENDED ORDER ON
)	SUMMARY DISPOSITION
Respondent.)	
)	

This pending contested case proceeding was initiated by an Order of Emergency Suspension of License filed March 1, 2006, against Preston Lynn Carbary based upon the suspension of his Washington license for unwanted sexual intercourse with two patients. Respondent's Washington license was suspended October 25, 2005. Mr. Carbary also held a license to practice professional counseling in the State of Idaho under License No. LPCP-3214.

This matter was assigned to the Hearing Officer on March 1, 2006. An Order to Show Cause hearing was conducted March 22, 2006. Following the Order to Show Cause hearing, the Hearing Officer issued an Order dated March 22, 2006, upholding the Order of

Emergency Suspension of Mr. Carbary's Idaho license.

At the request of the Deputy Attorney General, further proceedings were held in abeyance pending completion of the Washington proceedings. On August 15, 2007, the Board issued a Complaint against Mr. Carbary. The Complaint alleged that Respondent's Idaho license expired May 17, 2006; however, Respondent retains the right to renew his license for up to five (5) years after cancellation by paying required fees. Count I of the Complaint alleged that the suspension of his Washington license constitutes a violation of Idaho Code §54-3405C(5). Count II alleged that on June 26, 2007, Respondent was convicted of three (3) counts of rape in the second degree by a health care provider. A true and correct copy of the Judgment and Sentence and Warrant of Commitment are attached to the Complaint. Respondent was granted twenty-one (21) days to file an Answer to the Complaint.

Mr. Carbary filed an Answer dated September 3, 2007, stating he did not contest the charges in Paragraphs 1 through 10 of the Complaint. His Answer further states he does not request a hearing on the charges.

An Amended Complaint was issued on September 10, 2007. Mr. Carbary then filed another Answer to the Amended Complaint now requesting a Motion for Continuance since he was appealing the crimes for which he was convicted.

On November 16, 2007, the Board filed a Motion for Summary Disposition. By Order dated November 30, 2007, Mr. Carbary was

provided with twenty-one (21) days to file his response to the Motion for Summary Disposition. His response was received January 8, 2008, and states he does not contest the allegations of unprofessional conduct and does not contest that his Idaho license was suspended. He further did not contest that he was convicted of a felony and that it was illegal to practice in Idaho as a felon.

In the Motion for Summary Disposition, the Board requests only a summary disposition on Count II. In a footnote on page 7, the Board notes that, if they prevail on Count II, Count I will be withdrawn without prejudice to file further future proceedings if necessary.

The undisputed evidence clearly establishes that on or about May 2, 2007, Mr. Carbary was convicted in Stevens County, Washington of three (3) counts of rape in the second degree by a health care provider for conduct occurring in November, 2004, following a jury trial. He was sentenced on June 26, 2007, to prison for the convictions.

Mr. Carbary held an active Idaho license at the time these proceedings were instituted in March, 2006, and when he was convicted of the felony. Mr. Carbary's felony conviction provides grounds to revoke his Idaho license and to refuse to renew his license in the future.

The fact that Mr. Carbary has appealed his criminal conviction does not provide grounds to delay or continue this matter any further.

CONCLUSIONS OF LAW

Mr. Carbary's conduct violates Idaho Code §54-3407(2) and provides grounds to revoke his license and to refuse to renew his license in this future.

RECOMMENDED ORDER

With respect to Count II, it is recommended that Mr. Carbary's license to practice and his ability to renew his license to practice should be revoked.

DATED This 22 day of January, 2008.

JEAN R. URANGA

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Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 22 day of January, 2008, I served true and correct copies of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER ON SUMMARY DISPOSITION by depositing copies thereof in the United States mail, postage prepaid, in envelopes addressed to:

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